Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	

REPLY COMMENTS OF IDT TELECOM, INC.

INTRODUCTION

As evidenced by the initial round of comments in this proceeding, there is near unanimity throughout the industry in favor of a numbers/connections-based methodology. Countless reasons were given by the commenters, not the least of which is that carriers' end-user revenue subject to USF unstable and unpredictable in the current and future economic and regulatory climate. Moreover, IDT Telecom, Inc. ("IDT") and others demonstrated that a numbers/connections-based methodology benefits consumers through a fair, technology-neutral, predictable approach that ameliorates, rather than exacerbates the inequities of the current methodology. Furthermore, the Commission has implemented a numbers-based methodology in several other contexts, thus providing support and guidance for a comparable approach for USF. Finally, because the USF contribution methodology is ultimately a consumer issue, the Commission should not increase the wireless or VoIP safe harbors because it unfairly punishes subscribers of safe harbor providers.

ARGUMENT

I. THE COMMISSION SHOULD WORK TOWARD A NUMBERS/ CONNECTIONS-BASED CONTRIBUTION METHODOLOGY

A. There is near unanimity throughout the industry in favor of a numbers/connections-based methodology.

The initial comments filed in this proceeding reveal that the vast majority of the voice communications industry recognizes that including interconnected VoIP within the USF base and raising the wireless safe harbor are quick fixes and not long-term solutions to ensure the stability of the Universal Service Fund ("USF" or "the Fund"). An incredibly diverse group of commenters, including BOCs, wireless providers and interconnected VoIP providers - Cincinnati Bell, Cingular Wireless, LLC, The VON Coalition, Time Warner, Inc., National Cable & Telecommunications Association, AT&T, BellSouth Corporation, Vonage America, Inc., Verizon Communications, Inc. and CTIA – The Wireless Association - all support a numbers/connection-based methodology, and suggest that the best way to create predictability and stability for the Fund is through the implementation of a numbers/connections-based methodology. And while near-unanimous support from many of the largest providers within each sector of the industry does not legally compel the Commission to act accordingly, it certainly presents a compelling argument that the proposed methodology is good for the industry and consumers. Unlike most major issues involving industry reform – where competing sectors often sat on opposite sides – CLEC vs. ILEC, wireline vs. wireless, telecommunications vs. VoIP – support for a numbers/connections based methodology has quite possibly the broadest, most diverse base of support of any major communications reform measure since the 1996 Act. The Commission should take heed of this unprecedented support and not be sidetracked by those few, yet vocal, proponents of the *status quo*.

B. The current numbers and usage/revenue-based methodology is not stable and predictable.

Some commenters imply that the Fund has been made stable by the inclusion of interconnected VoIP and the increased wireless safe harbor.[1] They are wrong. Constant legal challenges to the inclusion of revenue items within the base (e.g., menu-driven prepaid calling cards, VoIP and, DSL), modifications to the percent of revenue subject to USF (e.g., revision of the wireless safe harbor) and industry-wide confusion about the application of USF to particular services[2] leave the revenue base fraught with uncertainty. Over time, new services and sources of revenue may (or may not) be developed to help sustain the Fund. Existing services and sources of revenue may shrink, compelling an increase in the USF Contribution Factor in upcoming quarters or may even grow, making it possible to reduce the Factor over time. But even if the rosiest scenario comes to pass, it would not demonstrate that the current contribution methodology is sound. Rather, it would simply mean that for the immediate future, the Fund's revenue base

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[1] *See generally,* "Reply Comments of The National Association of State Utility Consumer Advocates," *Universal Service Contribution Methodology*," WC Docket No. 06-122 (September 8, 2006).
[2] "Petition for Declaratory Ruling of CTIA- The Wireless Association ® on Universal Service Obligations," WC Docket No. 06-122, (August 1, 2006).

will not completely collapse. But as regulators with a duty to act in the public interest, the Commission cannot confuse temporarily avoiding disaster with promoting stability.

Some might argue in favor of the existing methodology's soundness by pointing to the Commission's recent announcement[3] that the 2006 Fourth Quarter USF Contribution Factor shall be 9.1%, down from 10.5% for the prior quarter. While it is certainly good news that the Factor shall be lower for the coming quarter, this decrease of 13% from the prior quarter is yet another example of how volatile the Fund and its Factors are. In recent years, the Factor has swung upward 20 and 25% from one quarter to the next (from 8.9% in the Fourth Quarter of 2004 to 10.7% in the First Quarter of 2005 and from 7.28% in the First Quarter of 2003 to 9.10% in the Second Quarter of 2003, respectively). Moreover, since the First Quarter of 2000, the Factor has risen nearly 65%.[4] Yet proponents of the *status quo* act as if there is nothing wrong with this. If income or sales taxes increased at such a rate during the same period, it is unlikely proponents of the *status quo* would be afforded as much deference as is the case in the USF debate. The undeniable fact is that the USF base and current contribution methodology is incredibly volatile and, proponents of the *status quo*, to their detriment, fail to acknowledge this and demonstrate how we can be assured that the Fund shall remain stable and consumers unharmed.

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[3] http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-1812A1.doc (Last viewed September 12, 2006).

[4] Arguably, this figure understates the increase, because certain services, such as VoIP weren't even subject to USF until recently.

C. A move toward a pure numbers/connections-based methodology benefits consumers.

Commenters that oppose a numbers/connections-based methodology fail to acknowledge that the current system effectively already employs a numbers-based methodology – at least for many consumers. The number-based methodology is in effect because the USF applies to the Subscriber Line Charge ("SLC"). If a subscriber has a traditional wireline phone number, he has a SLC.[5] Therefore, everyone consumer that has a traditional wireline phone number and SLC already has a numbers-based USF surcharge. And how much is the SLC? According to the Commission's "Study on Telephone Trends,"[6] in 2003, carriers reported $12,136,000,000 in SLC revenue. The SLC is subject to USF, so it is reasonable to assume that carriers include the SLC when calculating their end-user USF recovery charge. Applying 2003's average USF Contribution Factor of .0877 to the reported SLC revenue, we see that carriers – and by extension – consumers with a SLC – contributed approximately *$106,432,720* to the Fund based on SLC charges alone. Consumers without a SLC – such as interconnected VoIP and wireless users – did not contribute to the Fund on a SLC, thereby

[5] IDT has previously argued that the LNP surcharge, which varied by carrier but was, on average, approximately $0.33 per working telephone number per month and appeared on subscribers' bills for five years (or longer, depending on the provider) was another *de facto* per number charge. Since the LNP surcharge did not receive its own line on the FCC Form 499-A, IDT cannot provide an exact figure as to how much this lead to end-user USF recovery, however, since billed LNP surcharges were in the billions (AT&T has stated that initial LNP recovery costs for Ameritech, Pacific Bell, and Southwestern Bell, totaled $1.275 billion) *See,* Petition of AT&T Inc. for Waiver of the Commission's Rules to Treat Certain Local Number Portability Costs as Exogenous Costs Under Section 61.45(d); CC Docket No. 95-116; (July 10, 2006) at ¶5.

[6] http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend605.pdf at 119 (Last viewed September 12, 2006).

placing an additional burden on telephone users that are charged a SLC. Using current USF Contribution Factors and average SLC rates, traditional wireline subscribers remit approximately $0.60 per working phone number per month to the USF simply because of their SLC. Yet opponents of a current methodology fail to account for the fact that the elderly and economically disadvantaged – the people they purport to represent – are more likely to have traditional wireline service with a SLC and thus are disproportionately contributing to the Fund because of the application of the USF surcharge on the SLC.

In addition to being a numbers-based methodology, the current methodology is also a usage/revenue-based system because it is applies a surcharge based on a consumer's usage and subsequent charges. Under proposals previously submitted to the Commission, a numbers/connections-based methodology would add a small USF contribution charge – approximately $0.40 - to the surcharge already applied under the existing numbers and usage/revenue-based based methodology for traditional wireline users in return for eliminating all possible usage/revenue based USF charges. This suggests that any consumer with a SLC and $4.00 of interstate and international charges will benefit from the proposed numbers/connections-based methodology. But these will not be the only beneficiaries. For example, Lifeline subscribers – who currently do not pay USF on a SLC but *do* pay USF on interstate and international revenue – will pay no USF *whatsoever* under a numbers/connections-based methodology that exempts

Lifeline subscribers (which is the methodology IDT supports). NASUCA conveniently neglects to mention how Lifeline subscribers will benefit *more* from a numbers/connections-based methodology and low volume users (many of whom likely have higher than average toll rates and thus may reach $4.00 of interstate charges with as little as 20-30 minutes of interstate calls per month) will more or less break even. For traditional wireline subscribers, it is only the subscriber that does not qualify for Lifeline and makes virtually no interstate calls whatsoever that may see a slight USF increase under a numbers/connections-based methodology. And while it is unfortunate whenever any consumer sees a rate increase, given the numerous qualifications that must be met to fall into this discreet category and the limited rate increase (approximately $0.01333) per day per phone number, IDT believes the numbers/connections-based methodology is wildly pro-consumer.

Yet even this concession is too great to those that support the *status quo.* Access charge reform, such as that proposed in the "Missoula Plan"[7] may lead to higher SLCs, and thus, higher per number USF surcharges for those traditional wireline subscribers with a SLC. For example, under the Missoula Plan, the SLC may increase to $10.00. If the USF Contribution Factor remains consistent over time (and history has demonstrated that the factor only increases over time), the USF surcharge would already be equal to

[7] "Notice of Written Ex Parte Presentation," *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (July 24, 2006), Appendix A at 102.
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518404368

the flat rate associated with the numbers-based plan for a home with one working phone number.[8]

Higher SLCs are not only theoretical, they are real and their unequal impact on consumers is quantifiable. Pursuant to a recent Commission Order permitting additional LNP recovery, AT&T's End User Common Line Charge will increase from 24 to 37 cents for two years in the company's Southwestern Bell region and one year in the Ameritech and PacBell regions so that AT&T may recover an additional $211,000,000, all of which is subject to USF.[9] Under a similar ruling benefiting Verizon,[10] Verizon will be able to recover an additional $100,000,000 in unrecovered LNP costs. Applying the average of 2005's USF Contribution Factors - .10175 – to this $311,000,000, AT&T and Verizon consumers with a SLC will pay approximately an additional $31,644,250[11] into the Fund if the Commission retains its numbers and usage/revenue-based methodology. Thus, any increase to the SLC – or the inclusion of any new charges such as we saw with the LNP surcharge (separately and/or as part of the EUCL) – will only increase the default USF surcharge, thereby making a numbers/connections-based methodology even

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[8] This assumes a per number rate of $1.00 and a USF surcharge of $1.02, which is determined by multiplying the $10.00 SLC by the average 2006 USF Contribution Factor of .10175.

[9] *Petition of AT&T Inc. for the Waiver of the Commission's Rules to Treat Certain Local Number Portability Costs as Exogenous Costs Under Section 61.45(d),* CC Docket No. 95-116, Order 21 FCC Rcd 8078, ¶ 8 (Rel. July 10, 2006), *appeal docketed*, No. 06-3731 (3d Cir. August 14, 2006).

[10] *Verizon's Petition for Waiver of the Commission's Rules to Treat Unrecovered Local Number Portability Costs as Exogenous Costs under Section 61.45(d)*, CC Docket No. 95-116, Order, ¶ 5 (Rel. September 14, 2006)

[11] IDT does not begrudge the carriers the right to recover costs. Rather, we use this example merely to demonstrate that a particular class of consumers – those with a SLC – will be required to bear a disproportionate burden of the USF if the Commission maintains its numbers and usage/revenue based model.

more economically sound. Moreover, as demonstrated above and throughout IDT's comments, the numbers/connections-based methodology – by not discriminating against a consumer based on whether she has a SLC or no SLC, traditional wireline service or interconnected VoIP, etc. – is more fair to consumers and competitively neutral.

D. The Commission should not increase the wireless or VoIP safe harbors.

As IDT argued in its Initial Comments, the manner in which USF is applied to carrier revenue is fundamentally a consumer issue, because carriers recover USF contributions from consumers implicitly (through rates) and/or explicitly (through a line item recovery). Therefore, to "punish" safe-harbor carriers by increasing the safe harbor percentages only punishes the subscribers of these safe harbor carriers. These carriers will simply increase their USF recovery and their customers will pay higher USF surcharges. Moreover, several commenters[12] suggested that small wireless providers are most likely to rely upon the safe harbor due to the technical inability to track calls for reporting purposes. IDT believes that these small providers disproportionately serve consumers with less competitive alternatives due to their geographical location and economic status. Thus, once again, efforts to fortify the revenue-based methodology would harm the most vulnerable consumers. For this reason, the recommendation should be denied.

[12] *See,* "Comments of the Office of Advocacy, U.S. Small Business Administration, on the Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis," *Universal Service Contribution Methodology,* WC Docket No. 06-122 (August 14, 2006) at 3; "Comments of Rural Cellular Association," *Universal Service Contribution Methodology,* WC Docket No. 06-122 (August 9, 2006) at 2.

E. The Commission has implemented a numbers-based methodology in other contexts.

In addition to the programs mentioned in IDT's Initial Comments where end-user contributions are based, essentially, on working phone numbers (SLC, 911, LNP) and not on usage or revenue, it is also worth noting that the Commission has explicitly recognized the wisdom of basing its own Regulatory Fee – at least in the case of CMRS providers - on the number of telephone numbers or unit counts – in lieu of revenue for airtime, activation and most other wireless telecommunications revenue.[13] IDT believes the Commission can use the numbers-based methodology for the Regulatory Fee as a guide for how to implement a numbers-based USF contribution methodology. However, we do not believe the CMRS Regulatory Fee serves as a perfect model, as wireless providers' FCC Regulatory Fee is also based in part on wireless providers' separately reported toll revenue. Ultimately, though, the example provides further support for numbers/connections-based proponents because the Commission has yet again recognized that numbers-based methodology can be simple, efficient and predictable.[14]

CONCLUSION

[13] http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266850A1.doc

[14] As a general proposition, IDT supports a "pure" numbers/connections based methodology – and we share NASUCA's concern that a numbers/connections based methodology that contains carve-outs for countless services loses several of the hallmarks of the methodology: ease of reporting and auditing and elimination of arbitrage opportunities.

For the reasons stated herein, IDT Telecom, Inc. respectfully requests that the Commission move forward and implement a long-term, sustainable numbers/connections-based methodology.

Respectfully submitted,

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